IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 13, 2008 Session

JOSEPH STINNETT v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Rutherford County
No. F-34181-C James K. Clayton, Jr., Judge

No. M2007-02123-CCA-R3-CO - Filed September 18, 2008

The petitioner, Joseph Stinnett, appeals the trial court's denial of his petition for writ of error coram nobis. Following our review of the record, parties' briefs and applicable law, we affirm the judgment of the circuit court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

Darrell L. Scarlett and Thomas S. Santel, Jr., Murfreesboro, Tennessee, for the appellant, Joseph Stinnett.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Chadwick W. Jackson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

In January of 1996, following a bench trial, the petitioner was convicted of first degree premeditated murder and sentenced to life imprisonment. The facts surrounding the petitioner's conviction were summarized by this court on direct appeal as follows:

> In June 1995, Danny Wayne Phillips [the victim] was found laying face down in a pool of blood in an undeveloped subdivision off Enon Springs Road in Smyrna.
>
> At trial, Dr. Charles Harlan, the forensic pathologist, testified to the presence of multiple lacerations to the [victim's] head, primarily three distinct areas of laceration to back of the head with a smaller laceration above the others. He noted abrasions

to the left side of the forehead, left cheek, left eye, right eye, back, lower left arm, lower portion of the ribs, laceration to the right forehead, and a skull fracture to the back of the head. The abrasions to the chest demonstrated erythema, or reddening, indicating the injuries occurred before death and were consistent with being dragged across a paved surface facedown.

Dr. Harlan determined the cause of death to be blunt trauma to the head from a "coalescence of wounds," taking from a matter of minutes to several hours for death to occur. By examining the multiple injuries to the head, he determined there were "at least seven in number"; however, he testified that it was possible more blows occurred. Multiple blows struck in the same area resulted in compound wounds possibly caused by the butt of a gun, a rock, or a fist using a considerable amount of force. The victim showed no signs of defensive wounds.

Agent Robert McFadden, a forensic scientist with the TBI, testified to the "line of activity" where he discovered shoe tracks, grass samples, "bleed out" areas in the grass and on the asphalt, and a line of blood indicating where the victim had been dragged across the pavement into the weeds. The "line of activity" was "a minimum of over 100 feet" including dragging the victim twenty (20) feet across the asphalt and thirty-four (34) feet into the weeds. Samples taken from the grass, the two large rocks, and rocks from the asphalt were determined to be human blood. Detective Todd Spearman with the Smyrna Police Department testified that from his impressions of the crime scene, more than one person used a rock in commission of the offense.

The ongoing investigation established that the [victim] had been last seen in the presence of M.J. Cox, Chad Murphy, the [petitioner], and his brother John, all of whom were developed as suspects in the murder. Cox and Murphy lived together in LaVergne. Detective Spearman recovered a .380 Lorcin handgun at the home of M.J. Cox. The [petitioner] lived at the Chalet Apartments in Smyrna. The detective located a small gray foreign car belonging to the [petitioner] with numerous blood splatters. Pursuant to a consensual search of the [petitioner's] apartment, officers recovered shoes, clothes, and a suitcase belonging to the victim.

The [petitioner] initially denied any knowledge of the murder. Afterwards, he voluntarily came forward to make a second statement because, "somebody had done ratted, and I want to tell my story." After advising him of his rights, he made the following statement on June 9, 1995. The [petitioner] stated that he, John, (the [petitioner's] brother), Chad Murphy, and M.J. Cox were visiting a young lady at Lakeside Apartments in Smyrna. When they left, John began talking about "Red" [the victim] owing him money. John stated, "his time was up . . ." and "we are going to beat him up until he gets the point." On the way to [the victim's] house in Nashville, the young men bought a case of beer and their "adrenalin was pumping."

After arriving at the victim's home, Murphy went to the door and told [the victim] that John and the [petitioner] wanted to speak with [him]. The victim voluntarily got into the car under the ruse of going to "smoke a joint." The [petitioner] then announced, "I know the perfect spot to go to," a location off Enon Springs Road in Smyrna. Once at the "spot," the four [men] pretended to search the trunk for "weed" and the victim backed against the car while the others circled around him. The [petitioner] gave the signal, and M.J. hit [the victim] in the back of the head with the butt of a gun.

Then, the [petitioner] hit the victim in the face two or three times. Immediately, everyone joined in hitting the victim. When the victim yelled, "Let me talk to Joe [petitioner], let me talk to Joe," the beating momentarily ceased. The [petitioner] responded, "Red, you had long enough to pay the money that you owe my brother." The victim took off running, and the [petitioner] caught him and brought him back to the car. Again, [the victim] ran away and this time Murphy tackled him in the grass. The [petitioner] ran over to the victim and grabbed his waist while John kicked his face and ribs. The [petitioner] moved out of the way and Murphy "started throwing a rock on his head, smashing his head." The [petitioner] checked for a pulse, and the victim was still breathing. John said, "We have to kill him; he will go to the cops if we don't." At this point, [the victim] was begging for his life and they stopped beating him again. Thereafter, Murphy hit him a few more times with the rock. M.J. and the [petitioner] dragged him into the tall weeds. M.J. checked for a pulse and found none. Then, they all went to the [petitioner's] apartment, showered, threw the bag of bloody clothes into the lake, and, the following morning, washed the car.

Although the [petitioner's] second statement changed nothing from his first statement of a substantive nature, he added,

"Chad [Murphy] picked up a rock and told me to move out of the way*, then I looked up and siad [sic] no, then he siad [sic] move so I moved out of the way and walked to the car* to see what John was doing and he was looking for his keys. Then [Murphy] started pounding [the victim's] head with the rock over and over. *M.J. and I told him to stop* and he siad [sic] no that's what he gets, if he doesn't pay up well and he was laughing while he was pounding his head. He pounded his head about 20-25 times before he stopped."

Also introduced was a letter referred to as the "Dear Babe" letter in which the [petitioner] wrote to his girlfriend,

"Don't tell anyone, but I did a lot more to Red than I've siad [sic] I did. I regret it, but I have to admit it, it kind of felt good just beating his ass because of what he

would try to do to you. *But once the brick or rock came in the picture, it wasn't fun any more."*

A handwriting expert, Bob Muehlberger, testified in his opinion that both statements and the "Dear Babe" letter were written by the [petitioner].

The State introduced testimony from the [petitioner's] co-defendant, nineteen year old Chad Murphy, who had previously entered a guilty plea to first degree murder. Murphy's testimony and the [petitioner's] statements coincided throughout the majority of the trial. Murphy could not remember whether it was John or the [petitioner] that suggested they go to Nashville to see the victim. However, he recalled that both were upset with [the victim] because he owed John money and because [the victim] had been physically abusive with his wife, the [petitioner's] cousin. Murphy testified, "we all decided that we was just going to beat him up . . . It just got out of hand." The evidence demonstrated that only the [petitioner] and his brother knew where [the victim] lived.

In addition to the [petitioner's] statement, Murphy stated that the [petitioner] talked to M.J. about making the first move upon his signal, then the four men commenced hitting [the victim]. About ten minutes into the attack, [the victim] maintained consciousness and was begging for his life. After Murphy had tackled [the victim] in the weeds, M.J. tried to snap his neck while the victim was on his knees. Then, the [petitioner] stood behind [the victim] with his arm around his neck and tried to choke him. [The victim] gave no resistance, but asked the [petitioner] if he could please talk to him. [The victim] called out to the [petitioner] because he did not know Murphy or M.J. At this juncture, John Stinnett had returned to the car. Murphy admitted to picking up only one rock and hitting the victim with it. He testified he did not pick up the other rock; but at one point remembered M.J. was attempting to pick up a larger rock and called for assistance from the [petitioner]. *However, he never saw anyone else hit the victim with a rock.*

Without presenting any proof, the defense rested. The trial court, as the fact-finder, found the [petitioner] guilty of first degree murder after considering all the proof, the evidence, and statements of the [petitioner] to the exclusion of Murphy's prior inconsistent statements. FN1.

> FN1. As recognized by the trial judge and this court pursuant to Rule 613(a), Tenn. R. Evid., Murphy's prior inconsistent statements possessed only impeachment value and could not be used as substantive evidence. The State introduced Murphy's statement from the police video where Murphy stated several times the purpose of going to Nashville was to kill [the victim]. "John said he wanted to kill him . . . He said he wanted to go kill this mother . . . Not John's

> but Joseph's and John's idea. They both knew him. Me and M.J. had never seen him before." At trial, Murphy said he corrected himself in the statement saying they only went to "beat him up." Murphy's statement revealed further, "we knew if one of us didn't jump in and hit him, that we would die too." The correction Murphy was referring to was, "I didn't have the intent to murder him. I didn't-let's see, I had the intent to kill him-I just had the intent to hurt him real bad." Murphy explained that his friends spoke in slang where the word "kill" and "die" do not possess their literal meaning but only to "beat up." Also, Murphy related in his statement, "M.J.-I mean they hit him with a rock, too . . . M.J. and Joseph."

State v. Joseph Frederick Stinnett, No. 01C01-9707-CC-00288, 1998 WL 670408, *1-3 (Tenn. Crim. App. Sept. 30, 1998), *perm. app. denied* (Tenn. Apr. 12, 1999) (emphasis added).

On December 27, 2006, the petitioner filed the instant petition for writ of error coram nobis. The petitioner alleged he had newly available evidence in the form of two affidavits from his co-defendant, Chad Murphy. Murphy's first affidavit, dated October 26, 2005, recounted the events of the murder of Danny Phillips but asserted, "No one ever agreed to kill Danny and our only agreement was to beat him up and if I would have never hit Danny in the head with a rock, [Danny] Phillips would still be alive today." Murphy's second affidavit, dated December 7, 2006, alleged the following in relevant part:

> That on October 26, 2005 I swore to, signed and provided to Joseph Stinnett (my co-defendant) a statement — affidavit in regards to the events that transpired . . . of which we both stand convicted of First Degree Murder out of Rutherford County at Murfreesboro, Tennessee;
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> That all of the information that I provided in my October 26, 2005 statement is true and correct and I further add in continuance of such affidavit the fact that I know for certain that Joseph Stinnett did not in any way use a rock or any other object to hit Danny Phillips;
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> That I further add that I did in fact hear Joseph Stinnett tell me not to hit the victim, Danny Phillips, with a rock.
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> That I gave a statement and testified against Joseph Stinnett as I did because I thought – he had given a statement against me in which I was so angry that I neglected to tell the complete facts as to how things happened;

In his petition, the petitioner asserted this newly available evidence warranted a new trial. The petitioner further asserted that due process concerns tolled the one year statute of limitations in his

case. In response, the state filed a motion to dismiss. In its motion, the state asserted that the petition was time-barred and failed to raise a cognizable claim for relief.

On August 13, 2007, a hearing was held. At the hearing, the petitioner's co-defendant, Chad Murphy, testified that he pled guilty to first degree murder and was currently serving a life sentence in prison. He noted that he testified truthfully at the petitioner's bench trial. However, Murphy claimed that he was never asked to identify who hit the victim with a rock and who did not. He also asserted, "I was the only one that used the rock, and nobody else did. And what wasn't said [at the bench trial] was that [the petitioner] told me not to hit Danny [the victim] in the head with the rock prior to me doing so." Murphy then explained that he did not volunteer this information because he thought the petitioner had betrayed him to police and implicated him in the murder. However, he was now divulging this information after twelve years because he had matured, desired to change his life, and wanted to do things the right way.

On cross-examination, Murphy acknowledged that he and the petitioner had been corresponding by letter for a couple of years before he wrote the affidavits. He admitted that the petitioner had first contacted him by letter discussing the things they had lost. Murphy also admitted they wrote about how "things may have not been said the way they should have been said." Murphy asserted that although his trial testimony included great detail of the petitioner's involvement in the murder, he failed to mention the fact that the petitioner told him not to hit the victim with the rock because he was not asked.

The petitioner testified that he waived his right to a jury trial and proceeded with a bench trial based upon the advice of counsel. The petitioner asserted that had he known Murphy would acknowledge the fact that he told him not to hit the victim with the rock, he would not have waived his right to a jury trial. On cross-examination, the petitioner acknowledged that his pre-trial statements introduced as evidence at trial indicated that he told Murphy not to hit the victim with a rock.

At the conclusion of the hearing, the circuit court stated the following:

> I don't see how [the petitioner] can claim that this information was newly discovered. [The petitioner] knew that he had told [Murphy] no, don't hit him with a rock. Mr. Murphy knew at the time that [the petitioner] had told him no, don't hit him with a rock. In fact, there were even some statements made at the time of the trial that he said no, as I recall.

The circuit court, who conducted the petitioner's bench trial, then recounted the evidence presented against petitioner at trial. The court noted that the evidence met the elements of first degree murder, and the alleged newly discovered evidence would not have resulted in a different outcome had the evidence been introduced at trial. In a written order filed on August 31, 2007, the circuit court reviewed the first degree murder statute and reiterated its conclusion that had the statements averred

by Murphy been introduced at trial, the "verdict may not and would not have been any different." The court then denied the petition for writ of error coram nobis.[1]

ANALYSIS

Relief by petition for writ of error coram nobis is provided for in Tennessee Code Annotated section 40-26-105(b). That statute provides, in pertinent part:

> The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial. The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause.

The writ of error coram nobis is an "extraordinary procedural remedy," filling only a "slight gap into which few cases fall." *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999) (citation omitted). "The purpose of this remedy is to bring to the attention of the court some fact unknown to the court which if known would have resulted in a different judgment." *Freshwater v. State*, 160 S.W.3d 548, 553 (Tenn. Crim. App. 2004) (quoting *State v. Hart*, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995)). The decision to grant or deny a petition for writ of error coram nobis rests within the sound discretion of the trial court. *Hart*, 911 S.W.2d at 375. A petition for writ of error coram nobis must relate: (1) the grounds and the nature of the newly discovered evidence; (2) why the admissibility of the newly discovered evidence may have resulted in a different judgment had the evidence been admitted at the previous trial; (3) that the petitioner was without fault in failing to present the newly-discovered evidence at the appropriate time; and (4) the relief sought by the petitioner. *Freshwater*, 160 S.W.3d at 553.

We begin our review by addressing the state's argument that the petition for writ of error coram nobis was barred by the statute of limitations and the circuit court erred in granting the petitioner a hearing on the merits. In response to the state's argument, the petitioner submits that the gravity of his life sentence in prison coupled with the merit of his claim constitutes a due process concern which requires the tolling of the statute of limitations in his case.

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[1] The petitioner points out that in its order the circuit court erroneously focused on the elements of first degree felony murder rather than first degree premeditated murder when making its determinations regarding his petition for writ of error coram nobis. While we agree that the court erred in this regard, the error is harmless as it does not impact the court's overall determination that the petitioner's alleged newly discovered evidence would not have resulted in a different judgment, had it been presented at the trial.

A petition for writ of error coram nobis relief must be filed within one year of the time judgment becomes final in the trial court. *See* Tenn. Code Ann. § 27-7-103. However, a court may consider an untimely petition if applying the statute of limitations would deny the petitioner due process. *See Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001); *Burford v. State*, 845 S.W.2d 204, 209-10 (Tenn. 1992). To determine if due process requires tolling of the statute of limitations, a court must weigh the petitioner's interest in having an opportunity to present his claims in a meaningful time and manner against the state's interest in preventing the litigation of stale and fraudulent claims. *Burford*, 845 S.W.2d at 208. More specifically, a court should utilize the following analysis: (1) determine when the limitations period would normally have begun to run; (2) determine whether the grounds for relief actually arose after the limitations period would normally have commenced; and (3) if the grounds are later-arising, determine if, under the facts of the case, a strict application of the limitations period would effectively deny the petitioner a reasonable opportunity to present the claim. *Sands v. State*, 903 S.W.2d 297, 301 (Tenn. 1995).

Based on the record, it is clear that the petitioner's petition was filed approximately eleven years after the statute of limitations had expired. It is also clear that the state raised the untimeliness of the petition in its motion in opposition to the petition for writ of error coram nobis. *See Harris v. State*, 102 S.W.3d 587, 593 (Tenn. 2003) (state bears the burden of raising the bar of the statute of limitations as an affirmative defense). Furthermore, the petitioner failed to demonstrate how his claim of newly discovered evidence arose after the limitations period had run, or why he was effectively denied a reasonable opportunity to present his claim due to the expiration of the statute of limitations. Obviously, the petitioner had knowledge of his own participation in the murder and the statements he made to his co-defendant, Murphy, at the time of the murder. In fact, the record reflects that the substance of the petitioner's claim – (1) the petitioner did not hit the victim with a rock, and (2) he told Murphy not to hit the victim with a rock – was available at the time of trial and presented at trial. *See Stinnett*, 1998 WL 670408, at *1-3. Moreover, the petitioner had ample opportunity to cross-examine Murphy on any aspect of the murder at trial, including any statements he made to Murphy. As such, the petitioner's interest in litigating this claim via petition for writ of error coram nobis is minimal. On the other hand, the state has a significant interest in preventing the petitioner from seeking a tactical advantage through intentional delay, protecting the finality of judgments, and conserving the limited resources of the justice system. As such, we agree with the state that the petition was untimely and nothing in the record implicates due process concerns which required the tolling of the statute of limitations and a hearing on the merits.

Notwithstanding the procedural bar, the petitioner's claim does not survive scrutiny on the merit-review standard for error coram nobis relief. As a general rule, subsequently or newly discovered evidence which is simply cumulative to other evidence in the record or serves no other purpose than to contradict or impeach the evidence presented at trial will not justify the granting of a petition for the writ of error coram nobis when the evidence, if introduced, would not have resulted in a different judgment. *Hart*, 911 S.W.2d at 375. As previously noted, evidence indicating that Murphy did not see the petitioner use a rock to beat the victim and evidence indicating that the petitioner told Murphy not to hit the victim with a rock was evidence known to the petitioner and

was presented at trial. Notwithstanding the presentation of this evidence, the state introduced overwhelming evidence establishing the petitioner's active participation in the premeditated murder of the victim. Therefore, it is readily apparent to this court that the petitioner failed present any newly discovered evidence that may have resulted in a different judgment had it been presented at trial. *See* Tenn. Code Ann. § 40-26-105. Accordingly, the circuit court's denial of error coram nobis relief was proper.

CONCLUSION

Based on our review of the record, the parties' briefs, and the applicable law, we conclude that the petitioner is not entitled to error coram nobis relief. The judgment of the circuit court is affirmed.

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J.C. McLIN, JUDGE